

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAY SCHUYLEMAN,

CASE NO. C23-0562JLR

Plaintiff,

ORDER

V.

BARNHART CRANE AND
RIGGING CO., et al.,

Defendants.

I. INTRODUCTION

Before the court is Defendants Barnhart Crane and Rigging Co. and Barnhart Crane and Rigging, LLC's (together, "Barnhart") motion to dismiss Plaintiff Jay Schuyleman's second amended complaint. (Mot. (Dkt. # 32); Reply (Dkt. # 37); *see* SAC (Dkt. # 31).) Mr. Schuyleman opposes the motion. (Resp. (Dkt. # 35).) The court has considered the motion, the submissions of the parties, the relevant portions of the

1 record, and the governing law. Being fully advised,¹ the court GRANTS in part and
 2 DENIES in part Barnhart's motion to dismiss.

3 **II. BACKGROUND**

4 This action arises from Barnhart's alleged infringement of Mr. Schuyleman's
 5 patent covering a "novel device related to a hoisting apparatus . . . for use with a crane in
 6 positioning an object at a desired distance inside an opening of a building." (SAC ¶ 16.)
 7 Below, the court summarizes the factual and procedural background relevant to
 8 Barnhart's motion to dismiss.

9 **A. Factual Background**

10 Mr. Schuyleman is a former ironworker who worked on constructing large
 11 commercial and governmental buildings. (*Id.* ¶ 14.) He states that he "personally
 12 observed the difficulties and dangers of inserting large materials—such as glass or
 13 walls—through openings of high-rise buildings by using hanging platforms or fixed
 14 beams, which could cause drifting loads." (*Id.*) In 2008, he "came up with the idea of
 15 using a movable boom for hoisting heavy loads" and "combin[ed] the movable boom
 16 with offsetting counterweights" to enable a crane to "raise loads to the desired height
 17 with ease." (*Id.* (attaching photos of Mr. Schuyleman's "Flying Forklift").)

18 On November 27, 2012, the U.S. Patent and Trademark Office awarded Mr.
 19 Schuyleman U.S. Patent No. 8,317,244 (the "'244 Patent"), entitled "Apparatus and

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 22 ¹ Neither party has requested oral argument (*see* Mot. at 1; Resp. at 1) and the court finds
 that oral argument would not be helpful to its resolution of the motion, *see* Local Rules W.D.
 Wash. LCR 7(b)(4).

1 Method for Positioning an Object in a Building.” (*Id.* ¶ 17; *id.*, Ex. 1 (“’244 Patent”).)
2 Mr. Schuyleman “is the exclusive owner of all rights, title, and interest in the ’244
3 Patent.” (*Id.* ¶ 19.) The patent is “directed to . . . an improvement for an apparatus used
4 to lift a load during, for example, construction of a building.” (*Id.* ¶ 18 (citing ’244
5 Patent at 2:13-14).) It consists of one independent claim and 16 dependent claims. (*See*
6 *generally* ’244 Patent.) Claim 1 of the ’244 Patent covers:

7 1. An improvement for an offset hoisting apparatus having at least a top
8 side, a bottom side, a front side, and a rear side, the offset hoisting apparatus
9 for use with a crane apparatus to lift a load, the improvement comprising:
10 a rigid boom having a distal end and a proximal end, the distal end
11 including a hook means for supporting the load;
12 a front mount having a front boom aperture adapted for confining the
13 boom to slidable movement therethrough, the front mount fixed with
14 the offset hoisting apparatus, the distal end cantilevered from the front
15 mount to extend the load through an opening in a wall; and
16 a rear mount having a rear boom aperture adapted for confining the boom
17 to slidable movement therethrough, the rear mount fixed with the
18 offset hoisting apparatus;
19 whereby the boom may be selectively slid between a retracted and an
20 extended position, or therebetween, and the load may then be secured
21 to the hook means at the distal end of the boom, the crane apparatus
22 then able to lift the load.

16 (’244 Patent at 6:5-23.)

17 Barnhart has equipment rental locations in this District, including in Kent and
18 Mount Vernon, Washington, and operates the website www.barnhartcrane.com, which
19 includes information and videos regarding its products. (SAC ¶ 10.) Mr. Schuyleman
20 alleges that Barnhart is infringing the ’244 Patent by

21 making, using, selling, offering to sell, and importing into the U.S., certain
22 equipment with a moveable boom, including the Moveable Counterweight

1 Cantilever System (“MOCCS”) (e.g., Standard Movable Counterweight
 2 Cantilever System and Movable Counterweight Double Beam),
 3 Mini-MOCCS, and Mega-MOCCS [together, the “Accused Products”],
 4 through at least its website at <https://www.barnhartcrane.com/locations/> and
 5 offices located throughout the United States.

6 (*Id.* ¶ 6.) Mr. Schuyleman alleges that the Accused Products “have a slidable boom that
 7 can slide between a retracted position and an extended position, confined by a front
 8 mount and a rear mount fixed with an offset hoisting apparatus” and includes screenshots
 9 from videos on Barnhart’s website showing each Accused Product’s slidable boom in its
 10 retracted and extended position. (*Id.* ¶¶ 23-25.) He also alleges that “[t]he extendable
 11 and retractable boom in the Accused Products allow [*sic*] for extension of the load
 12 through an opening in a wall” and includes a screenshot from a video on Barnhart’s
 13 website showing an example of the boom in action. (*Id.* ¶ 26.) Mr. Schuyleman has
 14 attached to the complaint a claim chart for each Accused Product. (*Id.* ¶ 35, Ex. 2
 15 (Movable Counterweight Double Beam claim chart); *id.*, Ex. 3 (Mini-MOCCS claim
 16 chart); *id.*, Ex. 4 (Mega-MOCCS claim chart) (together, the “SAC Claim Charts”).) Each
 17 claim chart lists the elements of Claim 1 of the ’244 Patent, describes how Mr.
 18 Schuyleman alleges the Accused Product practices each element, and includes
 19 screenshots from and links to videos on Barnhart’s website that display the relevant
 20 features of the Accused Product. (*See generally* SAC Claim Charts.)

21 On December 9, 2022, Mr. Schuyleman sent Barnhart a letter notifying it of its
 22 infringement of the ’244 Patent. (SAC ¶ 29.) On December 19, 2022, Barnhart
 23 confirmed it had received the letter “with allegations of patent infringement,” and stated
 24 that it would investigate the allegations and “respond as soon as possible.” (*Id.* ¶ 31.)

1 Barnhart, however, failed to respond further to Mr. Schuyleman’s letter. (*Id.*) Mr.
2 Schuyleman alleges that Barnhart has since continued to infringe the ’244 Patent. (*Id.*
3 ¶ 32.)

4 **B. Procedural Background**

5 Mr. Schuyleman filed his original complaint in this action on April 11, 2023. (See
6 Compl. (Dkt. # 1).) On May 24, 2023, Barnhart moved to dismiss the original complaint
7 for failure to state a claim. (1st MTD (Dkt. # 16).) On June 10, 2023, however, Mr.
8 Schuyleman filed an amended complaint as a matter of course pursuant to Federal Rule
9 of Civil Procedure 15(a)(1)(B). (Am. Compl. (Dkt. # 20).) The court then denied
10 Barnhart’s first motion to dismiss as moot. (6/12/23 Order (Dkt. # 21).)

11 On June 26, 2023, Barnhart moved to dismiss Mr. Schuyleman’s amended
12 complaint. (2d MTD (Dkt. # 22).) On August 23, 2023, the court granted Barnhart’s
13 motion and dismissed Mr. Schuyleman’s claims for direct infringement of the ’244 Patent
14 in violation of 35 U.S.C. § 271(a) (Am. Compl. ¶¶ 26-34) and induced infringement of
15 the ’244 Patent in violation of 35 U.S.C. § 271(b) (*id.* ¶¶ 35-39) with leave to amend.
16 (8/23/23 Order (Dkt. # 30) at 9-10.) The court concluded that Mr. Schuyleman’s
17 amended complaint “relie[d] only on conclusory allegations and therefore fail[ed] to state
18 a plausible claim for relief.” (*Id.* at 7 (citing Am. Compl. ¶¶ 26-34; *id.*, Ex. D).) Relying
19 on *Bot M8 LLC v. Sony Corp. of America*, 4 F.4th 1342, 1352 (Fed. Cir. 2021), the court
20 held that it was “not enough for Mr. Schuyleman to simply recite the claim elements and
21 conclude that the accused Products have those elements.” (8/23/23 Order at 7.) Rather,
22 Mr. Schuyleman “must include factual allegations that ‘articulate why it is plausible that

1 the accused product infringes the patent claim.”” (*Id.* (quoting *Bot M8*, 4 F.4th at 1353).)
 2 Because Mr. Schuyleman failed to do so, the court dismissed the direct infringement
 3 claim and, by extension, the induced infringement claim. (*Id.* at 7-8.)

4 Mr. Schuyleman timely filed his second amended complaint on September 5,
 5 2023. (SAC.) He renewed his claims against Barnhart for direct infringement and
 6 induced infringement of the ’244 Patent and added a new claim for contributory
 7 infringement. (*Id.* ¶¶ 33-44.) Barnhart filed its third motion to dismiss on September 19,
 8 2023. (Mot.) Mr. Schuyleman filed a timely response, and Barnhart filed a timely reply.
 9 (See Resp.; Reply; 10/2/23 Order (Dkt. # 34) (granting Mr. Schuyleman’s motion for a
 10 two-week extension of time to file his response).) The motion is now ripe for decision.

11 III. ANALYSIS

12 The court sets forth the relevant standard of review before turning to Barnhart’s
 13 motion to dismiss Mr. Schuyleman’s second amended complaint.

14 A. Standard of Review

15 Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint
 16 “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6).
 17 Under this standard, the court construes the claim in the light most favorable to the
 18 nonmoving party, *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946
 19 (9th Cir. 2005), and asks whether the claim contains “sufficient factual matter, accepted
 20 as true, to ‘state a claim to relief that is plausible on its face,’” *Ashcroft v. Iqbal*, 556 U.S.
 21 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The
 22 court need not accept as true legal conclusions, “formulaic recitation[s] of the elements of

1 a cause of action,” *Chavez v. United States*, 683 F.3d 1102, 1008 (9th Cir. 2012) (quoting
 2 *Twombly*, 550 U.S. at 555), or “allegations that are merely conclusory, unwarranted
 3 deductions of fact, or unreasonable inferences,” *Sprewell v. Golden State Warriors*, 266
 4 F.3d 979, 988 (9th Cir. 2001). “A claim has facial plausibility when the plaintiff pleads
 5 factual content that allows the court to draw the reasonable inference that the defendant is
 6 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

7 Review is generally limited to the contents of the complaint. *Sprewell*, 266 F.3d at
 8 988. Courts may, however, “consider certain materials—documents attached to the
 9 complaint, documents incorporated by reference in the complaint, or matters of judicial
 10 notice—without converting the motion to dismiss into a motion for summary judgment.”
 11 *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Accordingly, the court
 12 considers the ’244 Patent and Mr. Schuyleman’s claim charts, which are attached to the
 13 second amended complaint and incorporated by reference therein. (See SAC, Exs. 1-4.)
 14 The court also considers the videos from Barnhart’s website about the Accused Products.
 15 (See SAC ¶¶ 23-28 (including links to videos on Barnhart’s website); SAC Claim Charts
 16 (same).)

17 **B. Motion to Dismiss**

18 Barnhart asserts that the court must dismiss Mr. Schuyleman’s second amended
 19 complaint in full because it fails to state a plausible claim for relief. (See generally Mot.)
 20 The court considers each of Mr. Schuyleman’s claims below.

1 1. Direct Infringement

2 A defendant is liable for direct infringement if it, without authorization, “makes,
 3 uses, offers to sell, or sells any patented invention” in the United States or imports a
 4 patented invention into the United States. 35 U.S.C. § 271(a). “A plaintiff is not
 5 required to plead infringement on an element-by-element basis.” *Bot M8*, 4 F.4th at 1352
 6 (citing *Nalco Co. v. Chem-Mod, LLC*, 883 F.3d 1337, 1350 (Fed. Cir. 2018)). “Instead, it
 7 is enough ‘that a complaint place the alleged infringer on notice of what activity is being
 8 accused of infringement.’” *Id.* (quoting *Lifetime Indus., Inc. v. Trim-Lok, Inc.*, 869 F.3d
 9 1372, 1379 (Fed. Cir. 2017) (internal quotation marks and edits omitted)); *see also Disc*
 10 *Disease Sols. Inc. v. VGH Sols., Inc.*, 888 F.3d 1256, 1260 (Fed. Cir. 2018) (holding that
 11 the allegations in the complaint need only give the defendant “fair notice of
 12 infringement”). To assert a plausible claim, however, the plaintiff “must do more than
 13 merely allege entitlement to relief; it must support the grounds for that entitlement with
 14 sufficient factual content.” *Bot M8*, 4 F.4th at 1352 (citing *Iqbal*, 556 U.S. at 678). “The
 15 level of detail required in any given case will vary depending upon a number of factors,
 16 including the complexity of the technology, the materiality of any given element to
 17 practicing the asserted claim(s), and the nature of the allegedly infringing device.” *Id.* at
 18 1353. “Accordingly, a plaintiff cannot assert a plausible claim for infringement under the
 19 *Iqbal/Twombly* standard by reciting the claim elements and merely concluding that the
 20 accused product has those elements.” *Id.* Instead, “[t]here must be some factual
 21 allegations that, when taken as true, articulate why it is plausible that the accused product
 22 infringes the patent claim.” *Id.*

1 Barnhart contends that Mr. Schuyleman's direct infringement claim fails because
 2 it is based on conclusory allegations, depends on "implausible" or "inconsistent" theories
 3 of claim construction, and omits several claim elements. (Mot. at 5-19.) The court
 4 disagrees, and denies Barnhart's motion to dismiss the direct infringement claim.

5 In his second amended complaint, Mr. Schuyleman alleges that Barnhart has
 6 infringed and continue[s] to infringe one or more of the claims of the '244
 7 [P]atent under 35 U.S.C. § 271(a), either literally or under the doctrine of
 8 equivalents, by making, using, selling, offering for sale, and/or importing
 9 into the United States products encompassed by those claims, including (as
 10 non-limiting examples) the MOCCs, Mega-MOCCS, and Mini-MOCCS.
 11 (SAC ¶ 35.) He further alleges, citing the SAC Claim Charts, that Barnhart infringes
 12 Claim 1 of the '244 Patent because each of the Accused Products incorporates each of the
 13 elements of that claim. (*Id.* ¶ 36 (alleging that the Accused Products include the elements
 14 of Claim 1 and listing those elements); *see also* SAC Claim Charts (showing how each
 15 Accused Product allegedly incorporates each element of Claim 1).)

16 These allegations satisfy the pleading standard for direct infringement. In *Disc
 17 Disease Solutions, Inc. v. VGH Solutions, Inc.*, the Federal Circuit held that the plaintiff's
 18 allegations met the *Iqbal/Twombly* pleading standard where (1) the matter involved a
 19 "simple technology," (2) the asserted patents were attached to the complaint and
 20 consisted of just four independent claims; (3) the complaint specifically identified the
 21 three accused products by name and by attaching photos of the product packaging, and
 22 (4) the complaint alleged that the accused products met "each and every element of at
 23 least one claim of the . . . Patent, either literally or equivalently." 888 F.3d at 1260; *see
 24 also NovaPlast Corp. v. Inplant, LLC*, No. 20-7396 (KM) (JBC), 2021 WL 5770264, at

1 *6 (D.N.J. Dec. 6, 2021) (denying motion to dismiss where plaintiff amended its
2 complaint to include photographs of the accused products, “indications on the respective
3 photographs where each claim limitation is met,” and claim charts with photos and
4 annotations). Here, Mr. Schuyleman’s second amended complaint (1) involves a
5 relatively simple technology; (2) the ’244 Patent is attached to the complaint and consists
6 of one independent claim and 16 dependent claims; (3) the complaint specifically
7 identifies the Accused Products by name, by attaching screenshots taken from Barnhart’s
8 own videos, and by linking to the videos on Barnhart’s website; and (4) the complaint
9 alleges that the Accused Products practice each element of Claim 1 of the ’244 Patent
10 either literally or equivalently. (*See generally* SAC; ’244 Patent.) In addition, Mr.
11 Schuyleman’s claim charts specifically identify the Accused Products and include photos
12 and annotations mapping the elements of the Claim 1 to features of the Accused
13 Products. (*See generally* SAC Claim Charts.) The court concludes that Mr.
14 Schuyleman’s second amended complaint meets or exceeds the pleading standards that
15 the Federal Circuit found sufficient in *Disc Disease Solutions* and is therefore sufficient
16 to provide Barnhart “fair notice of infringement” of the ’244 Patent. *Disc Disease Sols.*,
17 888 F.3d at 1260.

18 Barnhart’s arguments to the contrary are not persuasive. First, Barnhart contends
19 that the court should dismiss the complaint because Mr. Schuyleman failed to “pointedly
20 identify several claim elements in the appended claim charts.” (*See* Mot. at 10-13.) The
21 Federal Circuit has made clear, however, that “[a] plaintiff is not required to plead
22 infringement on an element-by-element basis.” *Bot M8*, 4 F.4th at 1352; *see also Disc*

1 *Disease Sols.*, 888 F.3d at 1260 (concluding it was enough that the plaintiff “alleged that
2 the accused products meet ‘each and every element of at least one claim of the [patents],
3 either literally or equivalently’”); *In re Bill of Lading Transmission & Processing Sys.
4 Pat. Litig.*, 681 F.3d 1323, 1343 (Fed. Cir. 2012) (“[T]here is no requirement that the
5 facts alleged mimic the precise language used in a claim[.]”). Thus, even if Mr.
6 Schuyleman omitted certain claim limitations from his claim charts, that omission is not
7 fatal to his claims at this stage of the proceedings.

8 Second, the court rejects Barnhart’s assertion Mr. Schuyleman’s claim must be
9 dismissed because it alleges “implausible constructions of the claim limitations ‘front
10 mount’ and ‘rear mount.’” (Mot. at 13-18.) As Barnhart acknowledges, “claim
11 construction is generally not proper for a Rule 12(b)(6) motion.” (*Id.* at 13; *see Reply at*
12 7); *see also In re Bill of Lading*, 681 F.3d at 1343 n.13 (noting that “claim construction at
13 the pleading stage—with no claim construction processes undertaken—was
14 inappropriate” and that the Federal Circuit “afford[s] the claims their broadest possible
15 construction at this stage of the proceedings”). Nevertheless, Barnhart contends that
16 under *Ottah v. Fiat Chrysler*, the court “may dismiss a complaint prior to claim
17 construction when the complaint rests on an implausible claim construction.” (Mot. at
18 13-14 (citing *Ottah*, 884 F.3d 1135, 1141-42 (Fed. Cir. 2018))). In *Ottah*, however, the
19 “implausible construction” was obvious: the accused product was a camera holder, while
20 the plaintiff’s patent was “explicitly limited to books.” *Ottah*, 884 F.3d at 1141.
21 Barnhart cites no case in which a court properly dismissed a complaint based on the type
22 of detailed claim construction analysis that Barnhart asks the court to perform here. (See

1 | generally Mot.; Reply.) Mindful of its duty to take the allegations in the complaint as
 2 | true when deciding a motion to dismiss, *see Iqbal*, 556 U.S. at 678, the court declines
 3 | Barnhart's invitation to construe the terms of Claim 1 at this stage of the proceedings.

4 | Finally, the court disagrees with Barnhart that the complaint must be dismissed
 5 | because it alleges facts inconsistent with direct infringement. (See Mot. at 18-19.)
 6 | Viewing the complaint in the light most favorable to Mr. Schuyleman, the court cannot
 7 | conclude that the claim language and features are "sufficiently incongruous as to make
 8 | the complaint implausible on its face." *Qwikcash, LLC v. Blackhawk Network Holdings, Inc.*, No. 4:19-CV-876-SDJ, 2020 WL 6781566, at *3 (E.D. Tex. Nov. 17, 2020) (citing
 9 | *Mosaic Brands, Inc. v. Ridge Wallet LLC*, No. 2:20-cv-04556, 2020 WL 5640233, at *4-5
 10 | (C.D. Cal. Sept. 3, 2020)). The court denies Barnhart's motion to dismiss Mr.
 11 | Schuyleman's direct infringement claim.

13 | 2. Induced Infringement

14 | To prevail on an induced infringement claim under 35 U.S.C. § 271(b), a plaintiff
 15 | must establish that there has been direct infringement of its patent and show that the
 16 | defendant "took certain affirmative acts to bring about the commission by others of acts
 17 | of infringement and had 'knowledge that the induced acts constitute patent
 18 | infringement.'" *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1286 (Fed. Cir. 2020)
 19 | (quoting *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 765-66 (2011)).
 20 | "[W]illful blindness can satisfy the knowledge requirement for active inducement . . .
 21 | even in the absence of actual knowledge." *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*,
 22 | 824 F.3d 1344, 1347 (Fed. Cir. 2016) (citing *Global-Tech*, 563 U.S. at 769). "Evidence

1 of active steps taken to encourage direct infringement such as advertising an infringing
2 use or instructing how to engage in an infringing use show an affirmative intent that the
3 product be used to infringe.” *GlaxoSmithKline LLC v. Teva Pharm. USA, Inc.*, 7 F.4th
4 1320, 1333 (Fed. Cir. 2021) (quoting *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 936 (2005)).

6 Barnhart argues that the court must dismiss Mr. Schuyleman’s induced
7 infringement claim because the complaint “provides no facts sufficient to plausibly
8 demonstrate Barnhart’s intent to encourage infringement by third parties.” (Mot. at 21-24
9 (internal edits omitted).) Again, the court disagrees with Barnhart. First, Mr.
10 Schuyleman has plausibly alleged that Barnhart’s Accused Products directly infringe the
11 ’244 Patent. (*See supra* Section III.B.1.) Second, Mr. Schuyleman satisfies the
12 knowledge requirement by alleging that Barnhart was on notice of—and thus was either
13 aware of or willfully blind to—the Accused Products’ infringement of the ’244 Patent as
14 early as December 9, 2022, when Mr. Schuyleman sent his letter to Barnhart. (SAC
15 ¶¶ 29-30; *see also id.* ¶ 31 (alleging that Barnhart responded to the letter on December
16 19, 2022).) Third, Mr. Schuyleman satisfies the affirmative intent element by alleging
17 that Barnhart’s website “provides information and videos regarding the operation and
18 usage of the Accused Products” and by providing direct links to those videos. (*Id.* ¶¶ 21,
19 27 (first quoting <http://www.barnhartcrane.com/videos/148/> (video on Barnhart’s website
20 describing features and benefits of the MOCCS); and then quoting
21 <http://www.barnhartcrane.com/videos/mini-moccs-animation/> (video describing features
22 and benefits of the Mini-MOCCS)), 28 (quoting

1 <http://www.barnhartcrane.com/videos/132/> (video describing features and benefits of the
 2 Mega-MOCCS)).) These videos “advertis[e] an infringing use” of the Accused Products
 3 and thus support the inference that Barnhart “took active steps to encourage direct
 4 infringement” and had “an affirmative intent that the product[s] be used to infringe.”
 5 *GlaxoSmithKline*, 7 F.4th at 1333 (quoting *Metro-Goldwyn-Mayer Studios*, 545 U.S. at
 6 936).

7 Barnhart asserts, citing *CyWee Group Ltd. v. HTC Corp.*, 312 F. Supp. 3d 974,
 8 979 (W.D. Wash. 2018), that Mr. Schuyleman’s allegations regarding Barnhart’s website
 9 and marketing videos are insufficient to satisfy the specific intent requirement. (Mot. at
 10 22-23; Reply at 9-10.) In that case, however, the plaintiff “offer[ed] no specific details
 11 about those promotional and instructional materials” and thus left the court “without any
 12 inkling as to what [the defendant] asserted in those materials.” *CyWee Grp.*, 312 F. Supp.
 13 3d at 980. In contrast, Mr. Schuyleman includes screenshots of, quotes from, and links to
 14 Barnhart’s website and videos in his complaint. (See, e.g., SAC ¶¶ 22-28.) As a result,
 15 the court can “discern whether [Barnhart] ‘touted the benefits of the accused products in
 16 ways that track the asserted patents’” in its videos and can reasonably infer that Barnhart
 17 had an affirmative intent to induce infringement. *CyWee Grp.*, 312 F. Supp. 3d at 980
 18 (quoting *Memory Integrity, LLC v. Intel Corp.*, 144 F. Supp. 3d 1185, 1195-96 (D. Or.
 19 2015)). Because Mr. Schuyleman has plausibly alleged that Barnhart induced
 20 infringement of the ’244 Patent, the court denies Barnhart’s motion to dismiss this claim.

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1 3. Contributory Infringement

2 “Contributory infringement occurs if a party sells or offers to sell, a material or
3 apparatus for use in practicing a patented process, and that ‘material or apparatus’ is
4 material to practicing the invention, has no substantial non-infringing uses, and is known
5 by the party ‘to be especially made or especially adapted for use in an infringement of
6 such patent.’” *In re Bill of Lading*, 681 F.3d at 1337 (quoting 35 U.S.C. § 271(c)).

7 Barnhart argues that this claim must be dismissed because Mr. Schuyleman has
8 failed to plead facts supporting the elements of the claim. (Mot. at 25-26.) The court
9 agrees with Barnhart that Mr. Schuyleman has failed to plead facts supporting the
10 materiality, non-infringing use, and knowledge elements of a contributory infringement
11 claim. Mr. Schuyleman alleges in Paragraph 40 of his second amended complaint that
12 Barnhart has contributed to infringement by third parties

13 by making, selling and/or offering for sale in the United States, and/or
14 importing into the United States, the Accused Products, knowing that those
15 products constitute a material part of the inventions of the ’244 Patent,
16 knowing that those products are especially made or adapted to infringe the
17 ’244 Patent, and knowing that those products are not staple articles of
18 commerce suitable for non-infringing use.

19 (SAC ¶ 40.) In his response to Barnhart’s motion, Mr. Schuyleman asserts that
20 Paragraphs 23 through 25 “plausibly pled . . . that the Accused Products may be used by
21 Defendants’ customers as part of a system that includes a hoisting apparatus such as a
22 crane . . . [and] that the Accused Products constitute a material part of practicing the ’244
23 Patent.” (Resp. at 19.) These paragraphs, however, state only that the Accused Products
24 “have a slidable boom that can slide between a retracted position and an extended

1 position, confined by a front mount and a rear mount fixed with an offset hoisting
2 apparatus" and show pictures of the boom in both positions. (SAC ¶¶ 23-25.) They say
3 nothing about materiality. He also asserts that Paragraphs 29 through 31 and 42, which
4 describe the December 2022 correspondence between Mr. Schuyleman and Barnhart,
5 plausibly allege that Barnhart "knew the Accused Products were made to be part of the
6 infringing system." (Resp. at 19 (citing SAC ¶¶ 29-31, 42).) Although the
7 correspondence supports the inference that Barnhart was on notice that its products
8 infringed the '244 Patent by December 2022 (*see supra* Section III.B.1), nothing in the
9 cited paragraphs suggests that Barnhart knew the Accused Products "to be especially
10 made or especially adapted for use in an infringement of such patent." *In re Bill of
11 Lading*, 681 F.3d at 1337. Finally, Mr. Schuyleman points only to the conclusory
12 statement in Paragraph 40 to support his argument that he "plausibly pled" that "the
13 Accused Products have no substantial non-infringing use." (Resp. at 19 (citing SAC
14 ¶ 40).) Because Mr. Schuyleman has not pleaded "sufficient factual matter, accepted as
15 true, to 'state a claim to relief that is plausible on its face,'" *Iqbal*, 556 U.S. at 678
16 (quoting *Twombly*, 550 U.S. at 570), the court grants Barnhart's motion to dismiss Mr.
17 Schuyleman's contributory infringement claim.

18 4. Leave to Amend

19 Mr. Schuyleman argues in depth that the court should grant him leave to amend
20 any claims that the court dismisses. (Resp. at 20-25.) On a Rule 12(b)(6) motion, "a
21 district court should grant leave to amend even if no request to amend the pleading was
22 made, unless it determines that the pleading could not possibly be cured by the allegation

1 of other facts.” *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d
2 242, 247 (9th Cir. 1990). A court, however, has discretion to deny leave to amend on the
3 basis of “bad faith, undue delay, prejudice to the opposing party, futility of amendment,
4 and whether the plaintiff has previously amended the complaint.” *Johnson v. Buckley*,
5 356 F.3d 1067, 1077 (9th Cir. 2004). Although Mr. Schuyleman has already amended
6 his complaint twice, this order is the court’s first opportunity to consider his contributory
7 infringement claim and the court is not convinced that amendment of that claim would be
8 futile. Furthermore, the court sees no grounds at this time for a finding of bad faith,
9 undue delay, or prejudice. Accordingly, the court grants Mr. Schuyleman leave to amend
10 his contributory infringement claim.

IV. CONCLUSION

12 For the foregoing reasons, the court GRANTS in part and DENIES in part
13 Barnhart's motion to dismiss Mr. Schuyleman's second amended complaint (Dkt. # 32).
14 The court GRANTS Barnhart's motion to dismiss Mr. Schuyleman's contributory
15 infringement claim and DISMISSES that claim without prejudice and with leave to
16 amend. Mr. Schuyleman shall file his amended complaint, if any, by no later than
17 **December 18, 2023.**

Dated this 8th day of December, 2023.



JAMES L. ROBART
United States District Judge